

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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COMPLAINT ON POST E.C.S.

Docket No. C99-1

ANSWER OF THE UNITED STATES POSTAL SERVICE  
(November 5, 1998)

On October 5, 1998, the Commission received a document entitled Complaint of United Parcel Service ("Complainant") ("Complaint") regarding the legality of "Post E.C.S." By letter dated October 6, 1998, to the General Counsel of the Postal Service, the Office of the Secretary advised the Postal Service of the Complaint's filing and designated the docket number above.

Complainant alleges that the Complaint is filed pursuant to 39 U.S.C. § 3662 and 39 C.F.R. §§ 3001.81 *et seq.* The Complaint consists of an introductory paragraph, 29 numbered paragraphs, and a prayer for relief. The Complaint is accompanied by two attachments.

The statements of the Postal Service on the allegations in the Complaint and the relief requested along with the recommended disposition of the Complaint are set forth in the accompanying Motion of the United States Postal Service to Dismiss and are incorporated herein by reference. By filing the instant Answer, the Postal Service does not concede that the Commission is authorized to entertain this Complaint under 39 U.S.C. § 3662. For reasons set forth in the accompanying Motion, no hearing is necessary.

Pursuant to Rule 84 of the Commission's Rules of Practice, the United States Postal Service answers as follows:

The heading and introductory paragraph of the Complaint contain no factual allegations and do not require a response.

1. Paragraph 1 of the Complaint contains no factual allegations and does not require a response. To the extent that a response is required, it is admitted.

2. Paragraph 2 of the Complaint is admitted, except that the Postal Service denies that Post E.C.S. is a "document delivery service" if that term is intended to mean hard-copy delivery of documents or letters.

3. Paragraph 3 of the Complaint is admitted.

4. Paragraph 4 of the Complaint is admitted.

5. Paragraph 5 of the Complaint contains a legal conclusion and does not require a response. To the extent a response is required, it is denied. Pleading further, the Postal Service denies that Post E.C.S. is a class of mail or type of mail service under 39 U.S.C. § 3621.

6. Paragraph 6 of the Complaint contains a legal conclusion and does not require a response. To the extent a response is required, it is denied.

7. Paragraph 7 of the Complaint contains a legal conclusion and does not require a response.

8. Paragraph 8 of the Complaint contains a legal conclusion and does not require a response.

9. Paragraph 9 of the Complaint is admitted to the extent Complainant intends that Post E.C.S. has not been the subject of a proceeding under section 3622 or 3623 of Title 39, United States Code. The remainder of Paragraph 9 of the Complaint contains no factual allegations and does not require a response. Pleading further, the Postal Service denies any implication in Paragraph 9 that it was required to submit a request for a recommended decision on prices for Post E.C.S.

10. Paragraph 10 of the Complaint is admitted to the extent Complainant intends that Post E.C.S. has not been the subject of a proceeding under section 3622 or 3623 of Title 39, United States Code. The remainder of Paragraph 10 is denied.

11. Paragraph 11 of the Complaint contains a legal conclusion and does not require a response. To the extent a response is required, it is denied.

12. Paragraph 12 of the Complaint contains a legal conclusion and does not require a response.

13. Paragraph 13 of the Complaint contains a legal conclusion and does not require a response. To the extent that a response is required, it is denied.

14. Paragraph 14 of the Complaint is denied.

15. Paragraph 15 of the Complaint contains a legal conclusion and does not require a response. To the extent that a response is required, it is denied.

16. The Postal Service is without information sufficient to permit it to form a belief as to the truth of the matters asserted in paragraph 16 of the Complaint.

17. Paragraph 17 of the Complaint contains a legal conclusion and does not require a response. To the extent that a response is required, it is denied.

18. Paragraph 18 of the Complaint contains a legal conclusion and does not require a response. To the extent that a response is required, the Postal Service denies that the provision of Post E.C.S. "at no charge" is contrary to Section 3622(b), and the Postal Service is without information sufficient to permit it to form a belief as to the truth of the matters asserted in the remainder of paragraph 18.

19. Paragraph 19 of the Complaint contains a legal conclusion and does not require a response. To the extent that a response is required, it is denied.

20. Paragraph 20 of the Complaint is admitted in part. Pleading further, the Postal Service admits that Post E.C.S. is being used by companies who are sending documents electronically. The Postal Service denies that "substantial numbers" of companies are using Post E.C.S, or that usage of Post E.C.S. can be characterized as "nationwide".

21. The Postal Service is without information sufficient to permit it to form a belief as to the truth of the matters asserted in Paragraph 21 of the Complaint.

22. Paragraph 22 of the Complaint contains a legal conclusion and does not require a response. To the extent that a response is required, it is denied.

23. Paragraph 23 of the Complaint contains no factual allegations, and therefore does not require a response.

24. Paragraph 24 of the Complaint is admitted, except that the Postal

Service denies any implication in Paragraph 24 that it was required to submit a request for an advisory opinion on Post E.C.S. to the Postal Rate Commission under 39 U.S.C. § 3661.

25. Paragraph 25 of the Complaint contains a legal conclusion and does not require a response. To the extent that a response is required, it is denied.

26. The first two sentences of Paragraph 26 contain no factual allegations and therefore do not require a response. To the extent a response is required, the Postal Service denies the first and second sentences of Paragraph 26. The Postal Service is without information sufficient to permit it to form a belief as to the truth of the matters asserted in the third sentence Paragraph 26 of the Complaint.

27. The Postal Service is without information sufficient to permit it to form a belief as to the truth of the matters asserted in Paragraph 27 of the Complaint. Pleading further, the Postal Service does not contest this allegation for purposes of this Answer.

28. Paragraph 28 of the Complaint contains no factual allegations, and therefore does not require a response.

29. Paragraph 29 of the Complaint is denied. Pleading further, the Postal Service denies that "requesting a recommended decision from the Commission" is required to show that the provision of Post E.C.S. is in accordance with the policies and factors set forth in the Postal Reorganization Act.

30. The remaining paragraphs contain the prayer for relief, and no response is required. To the extent a response is required, the statements in the prayer for

relief are denied.

31. The Postal Service denies all other allegations of material fact which have not been answered specifically herein.

The Postal Service affirmatively alleges as follows:

a. In an effort to explore the demand for, and capabilities of, its Electronic Postmark<sup>™</sup> software, the Postal Service is conducting a limited test of a secure electronic document delivery system, Post E.C.S., under the auspices of the International Post Corporation, in conjunction with the Canada Post Corporation and France's La Poste. The test is limited to no more than 3,500 licensed individuals.

b. Post E.C.S. is a totally electronic service for documents. Post E.C.S. allows documents in any format to be sent from a computer terminal electronically to a server, where they are converted into a standard Portable Document Format (PDF), postmarked by the Electronic Postmark server, and posted on an Internet site where the document is given its own URL, or Internet home page. The recipient, who may reside abroad or in the United States, is then informed by e-mail that there is a document available at the URL and is given a certain amount of time to retrieve it using the internet.

c. Post E.C.S. does not use the physical retail, mail processing, and delivery networks of the Postal Service. Users and recipients of the Post E.C.S. product conduct Post E.C.S. transactions exclusively through electronic communications.

d. Post E.C.S. is not a postal service under 39 U.S.C. §§ 3621, 3622, 3623, 3625, 3661, and 3662.

e. The Postal Service is not required to request that the Postal Rate Commission issue a recommended decision on Post E.C.S. prior to its offering the service to the public, or that the Postal Rate Commission issue an advisory opinion for a nationwide change in service under 39 U.S.C. § 3661 prior to offering Post E.C.S.

f. The Postal Rate Commission has no subject matter jurisdiction over the Complaint.

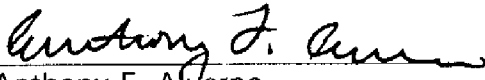
g. The complaint procedure in 39 U.S.C. § 3662 does not provide a means for interested persons to challenge the status of products as “nonpostal” or “postal” services. *See* Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Complaint of the Coalition Against Unfair USPS Competition, Docket No. C96-1 (April 8, 1997), at p. 4 n.1, 62 Fed. Reg. 23,813.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:


Daniel J. Foucheaux  
Chief Counsel  
Ratemaking

  
Anthony F. Alverno

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice and Procedure.

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
November 5, 1998

  
Anthony F. Alverno